

Appl. No. : 10/628,789  
Filed : July 28, 2003

### REMARKS

Claims 1-14 and 30-36 were and remain pending in the present application. Claims 1-7 and 30-36 have been allowed. Applicants have amended Claim 8 to expedite prosecution, but reserve the right to pursue previous versions of Claim 8 in the future. Therefore, the present application is now in condition for immediate allowance, and Applicants respectfully request the same. The claims set forth above include marking to show the changes made by way of the present amendment, deletions being in ~~strikeout~~ and additions being underlined.

#### The Applied Swab-Vaudrey Combination Does Not Render Claims 8 or 11-14 Obvious

Claims 8 and 11-14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,769,767 issued to Swab, et al. in view of U.S. Patent No. 6,311,155 issued to Vaudrey, et al. Applicants respectfully traverse the rejection and do not acquiesce; however, in order to expedite prosecution, Applicants have amended Claim 8. Applicants expressly reserve the right to pursue previous versions of Claims 8 and 11-14 in the future.

Claim 8 has been amended to recite, among other things (emphasis added), "An eyeglass comprising a frame . . . , first and second lenses . . . , first and second ear stems . . . , a compressed audio file storage and playback device disposed in the first ear stem, a power storage device disposed in the second ear stem, first and second speakers connected to the first and second ear stems, respectively, the speakers being configured to be alignable with an auditory canal of a wearer of the eyeglass, and wherein the first and speakers are configured to be translatable along first and second paths in a forward to rearward direction over a first range of motion, at least one of a speaker size and the first range of motion being configured to provide a *limited* effective range of coverage of about at least 1 ¼ inches *and shorter than the earstem*, and wherein the first and second speakers are further configured to pivot a limited, *predetermined distance* with respect to first and second predetermined pivot axes that are parallel to the first and second ear stems."

Applicants traverse the rejection at least because the applied art fails to teach or suggest all of the claim language. For example, the applied art fails to teach or suggest, "at least one of a speaker size and the first range of motion being configured to provide a limited effective range of coverage of about at least 1 ¼ inches and shorter than the earstem". Furthermore, the applied art

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fails to teach or suggest, “the first and second speakers are further configured to pivot a limited, predetermined distance with respect to first and second predetermined pivot axes that are parallel to the first and second ear stems.” In addition, the applied art fails to teach or suggest a compressed audio file storage and playback device disposed in the first ear stem, as discussed in the Response filed June 26, 2006.

Therefore, for at least these reasons, Claim 8 defines over the applied art and Applicants respectfully request allowance of Claim 8. In addition, Applicants submit that Claims 11-14 also define over the applied art, not only because they depend from Claim 8, but also because of the unique combination of features recited therein.

#### The Applied Swab-Vaudrey-Vogt Combination Does Not Render Claims 9 and 10 Obvious

Claims 9 and 10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Swab in view of Vaudrey and further in view of U.S. Patent No. 5,606,743 to Vogt, et al. Applicants respectfully traverse the present rejection. As noted above, Claim 8 clearly and non-obviously defines over the applied art. Thus, Applicants submit that Claims 9 and 10 also define over the prior art, not only because they depend from Claim 8, but also due to the unique combination of features recited therein.

#### Allowed Claims

Applicants note with appreciation the Examiner’s allowance of Claims 1-7 and 30-36.

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**CONCLUSION**

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issues promptly.

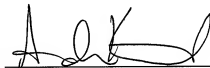
Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 22, 2006

By: \_\_\_\_\_



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